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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Patricia Lopez et al.,  
10 Plaintiff,

11 v.

12 City of Mesa, et al.,  
13 Defendants.  
14

No. CV-19-04764-PHX-ROS

**ORDER**

15 On August 23, 2024, Defendants City of Mesa and Heath Carroll (“Defendants”) filed a motion for Rule 37 Sanctions against Plaintiffs Estate of Anthony Lopez, Patricia Lopez, and Caesar Lopez (“Plaintiffs”) for allegedly failing to comply with the requirements of the Mandatory Initial Discovery Pilot (“MIDP”) program and the Federal Rules of Civil Procedure. (Doc. 109, “Mot”). Plaintiffs filed a response on September 6, 2024 (Doc. 111) and Defendants filed a reply on September 13, 2024 (Doc. 114). For what follows Defendants’ motion will be granted in part and denied in part.

22 **I. Background**

23 This case arises out of the shooting of Anthony Lopez (“Decedent”) by Officer Heath Carroll. Plaintiffs, who are the parents and estate of Decedent, argue the shooting of Decedent was unjustified.

26 On July 19, 2019, this case was selected for the MIDP program, which orders parties to the litigation to provide mandatory initial discovery before initiating further discovery. (Doc. 3). On February 26, 2020, the Court held a Rule 16 Scheduling Conference. (Doc.

27). At the Rule 16 Conference, the parties stated their MIDP obligations were complete and set a deadline of August 15, 2020 for fact discovery and final supplementation of MIDP responses. (Doc. 28). The completion of fact discovery and supplemented MIDP responses was later extended until October 15, 2020. (Doc. 36). Defendants' current counsel did not participate in discovery. They joined this case on July 15, 2024, and filed this motion on August 23, 2024. On September 25, 2024, the Court held a Status Conference and briefly discussed the issues in this motion. (Doc. 119).

Defendants argue Plaintiffs should be sanctioned because they have not complied with discovery obligations under the MIDP Program, the Federal Rules of Civil Procedure, and because of information discovered in the August 17, 2020 deposition of Patricia Lopez requires sanctions. Plaintiffs respond Defendants' motion is procedurally improper given (1) discovery in this case closed on October 15, 2020, (2) Defendants did not initiate any meet and confer efforts during the discovery period, and (3) the Court's scheduling order instructs the parties to not file written discovery motions without leave of court. (Docs. 28, 54).

Pursuant to Rule 37(b)(2) and Rule 37(c), Defendants ask for the following sanctions:

(1) That Plaintiffs be ordered to produce all responsive material within 30 days and that all objections to the material's admissibility at trial be deemed waived;

(2) That the Court order a forensic examination of [D]ecedent's phone at Plaintiffs' expense;

(3) That the Decedent's Estate be precluded from recovering hedonic damages;

(4) That Plaintiffs be precluded from recovering wrongful death and therefore, that the state law claim be dismissed; and

(5) That Defendants be reimbursed their fees and costs in bringing this Motion.

## **II. Legal Standard**

Federal Rule of Civil Procedure 37(b) provides various sanctions for a party's failure to obey a court's discovery order including:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37(b). “The scope of sanctions for failure to comply with a discovery order is committed to the sound discretion of the district court.” *Payne v. Exxon Corp.*, 121 F.3d 501, 510 (9th Cir. 1997). However, “Rule 37(b)(2) contains two standards—one general and one specific—that limit a district court’s discretion. First, any sanction must be ‘just’; second, the sanction must be specifically related to the ‘claim’ which was at issue in the order to provide discovery.” *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 707, 102 S. Ct. 2099.

Federal Rule of Civil Procedure 37(c)(1) provides:

**(1) Failure to Disclose or Supplement.** If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

- (A) may order payment of the reasonable expenses, including attorney’s fees, caused by the failure;
- (B) may inform the jury of the party’s failure; and
- (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi).

Fed. R. Civ. P. 37(c)(1). Rule 37(c)(1) contains an express exception under which a failure to provide timely information may be excused if the failure was “substantially justified” or “harmless.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)). To guide the determination of whether substantial justification

1 and/or harmlessness exist, courts evaluate the following factors: “(1) prejudice or surprise  
2 to the party against whom the evidence is offered; (2) the ability of that party to cure the  
3 prejudice; (3) the likelihood of disruption of trial; and (4) bad faith or willfulness in not  
4 timely disclosing the evidence.” *Liberty Ins. Corp. v Brodeur.*, 41 F.4th 1185, 1191-92 (9th  
5 Cir. 2022) (internal citation omitted).

### 6 **III. Discussion**

#### 7 **A. Preliminary Issues**

8 As an initial matter, Plaintiffs argue Defendants’ motion is procedurally defective  
9 given discovery closed in March 2020 and Plaintiffs served amended discovery responses  
10 in April 2020 with no objection from Defendants’ counsel at that time. Defendants respond  
11 that they promptly notified Plaintiffs of deficiencies after taking over the case on July 23,  
12 2024 to no response (Doc. 122 Ex. 1) and that neither Rule 37 nor the Scheduling Order  
13 imposes any prerequisites on moving for discovery sanctions.

14 The Court agrees with Defendants that Rule 37 contemplates no time limit for  
15 sanctions. However, the Court will consider potential sanctions in light of Defendants’  
16 failure to meet and confer in the discovery period.

#### 17 **B. Alleged MIDP Failures**

18 Defendants allege Plaintiffs violated several MIDP program discovery obligations.  
19 During the initial stages of the MIDP program, discovery responses are called for by Court  
20 order, rather than being served by an opposing party. After the mandatory initial discovery  
21 responses have been provided, additional discovery proceeds under the Federal Rules of  
22 Civil Procedure and the Court’s Scheduling Order. However, a party’s MIDP duties are  
23 continuous, and each party must serve supplemental responses when new or additional  
24 information is discovered or revealed.

25 As relevant here, this case’s MIDP Order states, “[p]arties must provide the  
26 requested information as to facts that are relevant to the claims and defenses in this case,  
27 whether favorable or unfavorable, and regardless of whether they intend to use the  
28 information in presenting their claims or defenses.” (Doc. 3 at 4). Additionally, parties are

1 required to “[l]ist the documents, electronically stored information (“ESI”), tangible things,  
2 land, or other property known by you to exist, whether or not in your possession, custody  
3 or control, that you believe may be relevant to any party’s claims or defenses” and  
4 “[p]rovide a computation of each category of damages claimed by you, and a description  
5 of the documents or other evidentiary material on which it is based, including materials  
6 bearing on the nature and extent of the injuries suffered.” (*Id.* at 5).

7 Defendants have argued several of Plaintiffs’ disclosures violated these duties. The  
8 Court will consider each of Plaintiffs’ alleged failures in turn.

9 1. Epilepsy Records

10 Defendants argue Decedent’s epilepsy medical records were not disclosed prior to  
11 Plaintiff Patricia Lopez’s deposition in violation of Plaintiffs’ MIDP duties. Defendants  
12 contend the Decedent’s epilepsy impacts his life expectancy and anticipated quality of life  
13 and is relevant to Plaintiffs’ claimed hedonic damages. Defendants also argue this omission  
14 bears directly on the case because Plaintiffs’ police procedures expert opines a reasonable  
15 alternative to the shooting was for the officers to pursue Decedent with flashing lights that  
16 are a known trigger for seizures.

17 Plaintiffs respond they did not possess copies of Decedent’s medical records, nor  
18 did Defendants subpoena or request Plaintiffs produce them. Plaintiffs add that Patricia  
19 Lopez’s deposition contained detailed information about (1) the frequency of Decedent’s  
20 seizures, (2) symptoms witnessed, (3) his prescription medication, and (4) the name of his  
21 treating neurologist.

22 Because (1) Plaintiffs disclosed Decedent had a seizure disorder in their MIDP  
23 response (Doc. 114-1), (2) Defendants did not subpoena medical records, and (3) Plaintiffs  
24 did not have access to Decedent’s medical records, the Court finds Plaintiffs’ alleged  
25 withholding of Decedent’s epilepsy records did not violate their MIDP duties.

26 2. Decedent’s Facebook Page

27 Defendants argue Decedent’s Facebook page, which included posts about his  
28 alcohol, drug use, and involvement with the criminal justice system, was withheld by

1 Plaintiffs in violation of their MIDP duties to provide relevant ESI and information  
2 pertinent to Plaintiffs' claimed damages. Defendants argue Patricia Lopez had access to  
3 Decedent's Facebook page given posts she made on July 26 2018, August 15, 2018, July  
4 10, 2018, and July 21, 2019.

5 Plaintiffs respond that Patricia Lopez made her last post on Decedent's Facebook  
6 page on July 21, 2019 and did not have access to Decedent's Facebook page when Plaintiffs  
7 served discovery responses in March and April of 2020. Moreover, Plaintiffs argue  
8 Decedent's criminal history and drug and alcohol use is irrelevant to Plaintiffs' wrongful  
9 death damages and Decedent's loss of enjoyment damages.

10 The Court finds Plaintiffs failed to comply with their ESI obligations by not  
11 providing information about Decedent's Facebook page. However, the Court finds  
12 Defendants were not substantially prejudiced by this failure given pertinent information on  
13 the Facebook page is now in their possession and only tangentially relates to claimed  
14 damages. The Court finds nondisclosure of Decedent's Facebook page does not warrant  
15 sanctions.

### 16 3. Memorial Website

17 Defendants also claim Plaintiffs did not disclose Decedent's memorial website,  
18 containing Decedent's obituary, photos, comments from friends, family, and a video.  
19 Plaintiffs respond they did not manage nor maintain the memorial website.

20 Defendants have not established any reason the memorial website is relevant to the  
21 Plaintiffs' MIDP obligations or any substantial prejudice resulting from nondisclosure. The  
22 Court finds nondisclosure of the memorial website did not violate Plaintiffs' MIDP duties.

### 23 4. Computation of Damages

24 Defendants contend Plaintiffs did not provide sufficient computation of damages or  
25 documents supporting their computation as required under MIDP. Plaintiffs have provided  
26 their MIDP response, state they already advised Defendants in their initial tort claim they  
27 seek damages in excess of \$3.5 million, and argue no specific guideposts exist to quantify  
28 wrongful death factors.

1 In their MIDP responses, Plaintiffs stated:

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3 Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Plaintiffs disclose that they are  
4 entitled to recover damages in the form of, inter alia, actual damages, mental  
5 anguish and humiliation, emotional distress, punitive damages, attorneys'  
6 fees, costs, and interest. The loss of a life is difficult to quantify. The  
7 following will be used in the calculation of Plaintiffs' damages:

- 8 1. The nature, extent, and duration of the injury;
- 9 2. The pain, discomfort, suffering, emotional and mental distress,  
10 anxiety already experienced and reasonably probable to be  
11 experienced in the future as a result of the injury;
- 12 3. Reasonable expenses of necessary funeral and burial expenses  
13 incurred by the Plaintiffs and any medical bills relating to medical  
14 treatment rendered to the decedent as a result of this incident;
- 15 4. Lost earnings to date, and any decrease in earning power or capacity  
16 in the future;<sup>1</sup>
- 17 5. Loss of love, care, affection, companionship, and other pleasures of  
18 the parent-child relationship, including support, guidance, and  
19 financial assistance; and
- 20 6. Loss of enjoyment of life

21 (Doc. 122-2 Ex. 7).

22 The Court finds Plaintiffs' responses were sufficient to meet their MIDP  
23 computation requirements.

### 24 **C. Alleged Inaccurate and Incomplete Discovery Responses**

25 The Court considers Defendants' allegations regarding Plaintiffs' discovery  
26 responses.

#### 27 **1. Request for Production No. 2: Photographs and Video**

28 Defendant's Request for Production ("RFP") No. 2 asked Plaintiffs to produce "all  
photographs or video of Anthony Lopez taken from August 1, 2015 to the present." (Doc.  
122 Ex. 8 at 4). Plaintiffs objected to the request as overly broad, unduly burdensome,  
vague and ambiguous, potentially irrelevant, an invasion of privacy, and "a fishing  
expedition." While preserving these objections, Plaintiffs provided several photos to

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<sup>1</sup> Plaintiffs have since withdrawn their claim for economic damages.



1 Defendants. Following these discovery responses, Patricia Lopez stated in her August 17,  
2 2020 deposition that she possessed Decedent's phone. (Doc. 122-2 Ex. 1 at 46:13-14).

3 Defendants argue Plaintiffs' productions were incomplete because they omit photos  
4 Patricia Lopez had access to on the Decedent's Facebook page and Decedent's phone.  
5 Plaintiffs respond that Patricia Lopez produced photographs of Decedent in her actual  
6 possession, on her phone, or physical print photographs.

7 Given Plaintiffs informed Defendants they had objections, Defendants' knowledge  
8 of Decedent's phone, and failure to meet and confer to request further photos in the  
9 discovery period and seek relief from the Court, the Court finds Plaintiffs did not violate  
10 their discovery obligations. However, the Court will order Plaintiffs to provide Decedent's  
11 phone to Defendants if they have not already done so.

12 2. Request for Production No. 4: Communications To/From Decedent

13 Defendants' RFP No. 4 states: "Please produce all documents, correspondence,  
14 emails, text messages, and other communications to and/or from Anthony Lopez." (Doc.  
15 122-2 Ex. 8 at 4). Plaintiffs objected to the request as overly broad, unduly burdensome,  
16 an invasion of privacy, and seeking potentially irrelevant documents. Plaintiffs further  
17 responded they were unable to produce Patricia Lopez's messages on her previous phone.  
18 Following these discovery responses, Patricia Lopez stated in her August 17, 2020  
19 deposition that she possessed Decedent's phone. (Doc. 122-2 Ex. 1 at 46:13-14).

20 Defendants argue Patricia Lopez should have searched Decedent's cell phone for  
21 messages. Plaintiffs respond that Defendant City of Mesa could have searched Decedent's  
22 cell phone when it was in their possession for several weeks after the shooting. In  
23 Defendants' reply, they contend Defendants did not have a legal right to search the cell  
24 phone when it was in their possession and did not have notice of Plaintiffs' intent to sue  
25 when it returned the phone to Plaintiffs. Defendants add that Plaintiffs had an independent  
26 legal obligation to search the cell phone when it was returned to them.

27 Given Plaintiffs' stated discovery objections and knowledge that Defendants  
28 previously held Decedent's phone, the Court finds Plaintiffs were not negligent in failing



1 to provide Decedent's phone to Defendants. Additionally, Plaintiffs' omission was  
2 substantially harmless given Defendants' awareness of Decedent's phone and failure to  
3 meet and confer to request the phone or seek relief from the Court to search the phone  
4 during the discovery period. The Court will order Plaintiffs provide the phone to  
5 Defendants if they have not done so, but will award no further sanction on this allegation.

6 3. Interrogatory No. 2: The Decedent's Activities

7 Interrogatory No. 2 states: "Give a detailed account of your knowledge and  
8 understanding of [Decedent's] activities during the 48-hour period immediately preceding  
9 his death, including all communication you had with [Decedent] during that time period  
10 and his use of any alcohol, drugs, or medications." (Doc. 122-2 Ex. 5 at 2). Plaintiffs  
11 objected to the request on the grounds of privacy, information protected by the Health  
12 Insurance Portability and Accountability Act of 1996, physician-patient privilege and/or  
13 psychotherapist-patient privilege, overly broad and unduly burdensome, and not  
14 reasonably calculated to lead to discovery of admissible evidence. While preserving these  
15 objections, Plaintiff Patricia Lopez provided,

16 On July 19, 2018, Anthony Lopez went to Raceway Car Wash to follow up on a  
17 job application he had submitted. Anthony Lopez also went to buy groceries for  
18 Plaintiff Patricia Lopez with a friend, and his friend drove. On July 20, 2018  
19 Anthony Lopez walked to the Circle K on Broadway & Dobson to buy some  
20 snacks. Anthony Lopez stayed home during the day on that date and played video  
21 games in his room. Patricia Lopez told him goodnight and that she loved him. That  
22 was the last time that Patricia Lopez saw Anthony Lopez alive.

23 (*Id.*).

24 Defendants contend Plaintiff Patricia Lopez made several notable omissions  
25 answering this interrogatory. First, Defendants argue the answer omits Decedent's visit to  
26 a marijuana dispensary at 3:13 PM using Patricia Lopez's vehicle, which Decedent was  
27 driving at the time of the shooting. Defendants opine because Patricia Lopez's testimony  
28 stated Decedent did not have a driver's license and had never driven her vehicle prior to  
the shooting, Patricia Lopez either took Decedent to the dispensary herself or Decedent

1 took her vehicle without her knowledge in the middle of the day. Second, Defendants argue  
2 Plaintiffs omitted information that Decedent was looking to play pool on the night of his  
3 death, which could help identify individuals who were with Decedent on the night of his  
4 death who potentially observed him drinking.

5 Plaintiffs respond Patricia Lopez had no reason to know Decedent's visit to the  
6 dispensary because her car was impounded after Decedent's death, giving her no  
7 opportunity to view the dispensary receipt. Plaintiffs also argue Patricia Lopez gave a  
8 recorded interview to the Mesa Police Department on July 21, 2018, when her memory of  
9 events was better than her deposition and discovery responses. In this interview, Patricia  
10 Lopez stated Decedent went to play pool on the night of the shooting and returned home  
11 that night before she went to bed. Plaintiffs additionally contend Decedent's visit to play  
12 pool was irrelevant to his death and Defendants already have necessary information about  
13 Decedent's alcohol consumption from his toxicology report at the time of the shooting.

14 The Court finds Patricia Lopez's answer was incomplete in omitting Decedent's  
15 visit to play pool, but Defendants have shown no substantial prejudice given all omitted  
16 information to this interrogatory was already testified by Patricia Lopez, unknown to  
17 Patricia Lopez, or already known by Defendants. The Court will award no sanction on this  
18 allegation.

19 4. Interrogatory No. 5 and Request for Production No. 5 Decedent's Social Media

20 Defendants' Interrogatory No. 5 states: "Identify any and all social media accounts  
21 including, but not limited to, blog entries, web pages, Twitter, Facebook, Instagram,  
22 Google+ and/or My Space, that you and/or [Decedent] owned, created or participated in  
23 from July 2014 to the present date, including each user ID and password necessary to access  
24 each, and whether such content still exists or has been deleted since its submission." (Doc.  
25 122 Ex. 5 at 6-7). Plaintiffs objected to the interrogatory as overly broad and burdensome,  
26 seeking inadmissible evidence, and a fishing expedition. Without waiving objections,  
27 Plaintiff Patricia Lopez responded:

28 Plaintiff believes that [Decedent] may have had a Facebook account, which may or  
may not still exist. Plaintiff does not have the user ID or password to her son's

1 account. Plaintiff Patricia Lopez maintains a Facebook account. On the basis of the  
2 foregoing objections, Plaintiff will not produce her password to her account.

3 (*Id.*).

4 Defendants' Request for Production No. 5 states,

5 Please produce a copy of all notes, messages, correspondence, voicemails, diaries,  
6 logs, journals, diagrams, renderings, emails, text messages, social media  
7 (including, but not limited to, Facebook, Twitter, Instagram, and Pinterest)  
8 correspondence, posts, messages, photographs and video, created before, during,  
9 or after the incident that relates in any way to: the incident, the incident scene,  
10 your injuries, facts related to the incident, responders to the incident scene,  
11 witnesses, parties, any description of or reference to the incident alleged in the  
12 complaint, and any injuries referenced in your Complaint, Mandatory Initial  
13 Discovery Responses, or disclosure statements

14 (Doc. 122-2 Ex. 8 at 5). Plaintiffs objected to the request as overly broad, unduly  
15 burdensome, vague and ambiguous, and an invasion of privacy. Without waiving  
16 objections, Plaintiffs responded, "After a diligent search and reasonable inquiry, Plaintiffs  
17 are unable to locate any documents responsive to this Request that have not already been  
18 produced pursuant to Plaintiffs' initial disclosures. Plaintiffs reserve their right to amend  
19 or supplement this response." (*Id.*).

20 Defendants argue Plaintiffs failed to produce Decedent's Facebook page, memorial  
21 website, or Snapchat account. Plaintiffs respond Ms. Lopez made her last post on  
22 Decedent's Facebook page on July 21, 2019 and did not have access to Decedent's  
23 Facebook when she served discovery responses in March and April of 2020. Plaintiffs add  
24 they had no knowledge of Decedent's Snapchat account and did not communicate with  
25 Decedent on Snapchat. Lastly, Plaintiffs again argue they did not manage or maintain  
26 Decedent's memorial website.

27 The Court finds Plaintiffs did fail, but were not reckless in failing to provide the  
28 Facebook and Decedent's memorial page pursuant to these requests. And, given Plaintiffs'  
stated objections, Defendants' failure to timely meet and confer in the discovery period,  
and Defendants' current access to this information, the Court also finds Plaintiffs'  
responses were substantially harmless. The Court will award no sanction on this allegation.

1           5. Request for Admission No. 4: Felony Probation

2           Defendants' Request for Admission No. 4 asked Plaintiffs to "admit that Decedent  
3           knew on July 21, 2018, that he was on felony probation pursuant to a plea agreement for a  
4           prior crime." (Doc. 122 Ex. 10 at 2). Plaintiffs objected to the Request as being compound  
5           and calling for speculation, but responded "Deny subject to the foregoing objections." (*Id.*).

6           Defendants argue Plaintiffs should have admitted this request because Decedent  
7           posted on his Facebook page 30 days before his death that he was going to see his "P.O."  
8           (Doc. 122-2 Ex. 1 at 2) and a receipt for TASC urine drug testing has been produced, which  
9           is a court ordered process and part of probation. (Doc. 122-2 Ex. 9). Plaintiffs respond that  
10          the question was compound in asking what Decedent knew, whether the probation was  
11          felony probation, whether the probation was the result of a plea agreement, and whether  
12          Decedent was still on probation at the time of his death. Plaintiffs add Defendant City of  
13          Mesa has information regarding Decedent's probation and Plaintiff Patricia Lopez has  
14          testified about Decedent's felony conviction, her lack of awareness as to the terms, charges  
15          or any paperwork regarding Decedent's probation, and stated she drove Decedent to the  
16          Probation Department multiple times.

17          Given Defendants' present knowledge of Decedent's felony probation and  
18          Defendants' failure to meet and confer to amend responses in the discovery period and seek  
19          relief from the Court, the Court finds Plaintiffs did not violate their discovery obligations  
20          on this allegation.

21               **D. False Deposition Testimony**

22          Defendants have argued Plaintiff Patricia Lopez gave false deposition testimony  
23          when asked about the photographs she possessed in the following excerpt:

24  
25               Ms. Alvarado: In terms of when I looked through the photos, most of them seemed  
26               to be from when Anthony was a baby, a toddler, a young kid playing baseball. ***Did***  
27               ***you have any photos of him from the last two years of his life?***

28               Plaintiff: He did not like to take pictures.

              Ms. Alvarado: Okay. So the answer is, no, you don't---

              A: ***No***—

              Q: Have any? Okay. Have you ever checked his phone to see if there's any

1 photos of him on that phone?

2 A: No.

3 Q: So, to your knowledge, is that photograph of you and Anthony at the beach  
4 the most recent photograph you have of him prior to his death?

5 A: I have a couple that were given to me by friends.

6 Q: How—what was Anthony doing in those photos?

7 A: They are just selfies.

8 (Doc. 122 Ex. 2 at 65).

9 Defendants argue Patricia Lopez gave misleading responses in her testimony given  
10 her direct access to Decedent's photographs on Facebook and the public memorial website.  
11 Plaintiffs respond that Patricia Lopez produced photographs she had in her possession on  
12 her phone, did not have access to the Facebook page at the time of her deposition, and did  
13 not create or maintain the memorial website. Thus, Plaintiffs did not violate discovery  
14 requirements.

15 The Court finds Patricia Lopez's deposition responses were not intentionally  
16 incomplete, inaccurate, or misleading.

### 17 **E. Preclusion of Consortium Damages and State Law Claims**

18 Defendants also argue Plaintiffs should not be able to collect post-death hedonic  
19 damages under U.S. Supreme Court precedent and Plaintiffs' state law claim fails under  
20 Arizona Law. Plaintiffs respond that survival damages are recoverable and Defendants'  
21 state law objections are an attempt to bring a second motion for summary judgement. The  
22 Court agrees, and will deny these requests without prejudice assuming it has relevance  
23 before trial.

### 24 **F. Conclusion**

25 The Court finds Plaintiffs have not committed sanctionable conduct in their  
26 discovery responses under Rule 37. However, the Court will order Plaintiffs to provide  
27 Defendants with the phone of Decedent Anthony Lopez within 10 days of the entry of this  
28 order.

Accordingly,

**IT IS ORDERED** Defendants' Motion for Rule 37 Sanctions (Doc. 122) is

1 **GRANTED IN PART and DENIED IN PART**

2 **IT IS FURTHER ORDERED** Plaintiffs are to provide Defendants within 10 days  
3 the phone of Decedent Anthony Lopez if they have not already done so.

4 **IT IS FURTHER ORDERED** the parties should be advised that the trial date of  
5 February 25, 2025 and other pretrial dates set forth in the September 17, 2024 order (Doc.  
6 115) are firm.

7 Dated this 13th day of November, 2024.

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11 Honorable Roslyn O. Silver  
12 Senior United States District Judge  
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